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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 BENJARDI B. VIRAY,

10 Plaintiff,

11 vs.

12 HON. JESSIE E. WALSH, *et al.*,

13 Defendants.

Case No. 2:13-cv-02004-APG-NJK

14
15 **SCREENING ORDER**

16 Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections, has
17 submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an application to
18 proceed *in forma pauperis*.

19 **I. In Forma Pauperis Application**

20 Before the Court is plaintiff's application to proceed *in forma pauperis*. Based on the
21 information regarding plaintiff's financial status, the Court finds that plaintiff is not able to pay an
22 initial installment payment towards the full filing fee pursuant to 28 U.S.C. § 1915. Plaintiff will,
23 however, be required to make monthly payments towards the full \$350.00 filing fee when he has
funds available.

24 **II. Screening Standard**

25 Federal courts must conduct a preliminary screening in any case in which a prisoner seeks
26 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.
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1 § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims
 2 that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek
 3 monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. §
 4 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica*
 5 *Police Dep't*, 901 F.2d. 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a
 6 plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of
 7 the United States was violated, and (2) that the alleged violation was committed by a person acting
 8 under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

9 In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation
 10 Reform Act of 1995 (PLRA), a federal court must dismiss a prisoner's claim, "if the allegation of
 11 poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on which relief
 12 may be granted, or seeks monetary relief against a defendant who is immune from such relief." 28
 13 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief can be
 14 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same
 15 standard under § 1915 when reviewing the adequacy of a complaint or an amended complaint.
 16 When a court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend
 17 the complaint with directions as to curing its deficiencies, unless it is clear from the face of the
 18 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
 19 F.3d. 1103, 1106 (9th Cir. 1995).

20 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v.*
 21 *Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a
 22 claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the
 23 claim that would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir.
 24 1999). In making this determination, the court takes as true all allegations of material fact stated in
 25 the complaint, and the court construes them in the light most favorable to the plaintiff. *See*
 26 *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a *pro se* complainant are
 27 held to less stringent standards than formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449
 28 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). While the standard

1 under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than
 2 mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A
 3 formulaic recitation of the elements of a cause of action is insufficient. *Id.*; *see Papasan v. Allain*,
 4 478 U.S. 265, 286 (1986).

5 Additionally, a reviewing court should “begin by identifying pleadings [allegations] that,
 6 because they are no more than mere conclusions, are not entitled to the assumption of truth.”
 7 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide the framework
 8 of a complaint, they must be supported with factual allegations.” *Id.* “When there are well-pleaded
 9 factual allegations, a court should assume their veracity and then determine whether they plausibly
 10 give rise to an entitlement to relief.” *Id.* “Determining whether a complaint states a plausible claim
 11 for relief [is] a context-specific task that requires the reviewing court to draw on its judicial
 12 experience and common sense.” *Id.*

13 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte*
 14 if the prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on
 15 legal conclusions that are untenable (e.g., claims against defendants who are immune from suit or
 16 claims of infringement of a legal interest which clearly does not exist), as well as claims based on
 17 fanciful factual allegations (e.g., fantastic or delusional scenarios). *See Neitzke v. Williams*, 490
 18 U.S. 319, 327-28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

19 **III. Screening of the Complaint**

20 Plaintiff brings a civil rights action against Judge Jessie E. Walsh of the Eighth Judicial
 21 District Court for the State of Nevada. Plaintiff alleges that Judge Walsh denied his motion to
 22 extend his prison copywork limit, which was filed in state court habeas proceedings. Plaintiff
 23 alleges that Judge Walsh’s ruling made it difficult to litigate his state court proceedings and
 24 otherwise violated his civil rights.

25 Plaintiff may not bring a civil rights action against Judge Walsh because she made a ruling
 26 denying his motion to extend his prison copywork limit. Judges are absolutely immune from civil
 27 lawsuits for judicial acts taken within the jurisdiction of their courts. *Schucker v. Rockwood*, 846
 28 F.2d 1202, 1204 (9th Cir. 1988) (per curiam) (citations omitted); *see also Mireles v. Waco*, 502 U.S.

1 9, 9 (1991) (per curiam); *Pierson v. Ray*, 386 U.S. 547, 553-54 (1967); *Brown v. Cal. Dep't of*
 2 *Corr.*, 554 F.3d 747, 750 (9th Cir. 2009) (absolute immunity is generally accorded to judges
 3 functioning in their official capacities); *Miller v. Davis*, 521 F.3d 1142, 1145 (9th Cir. 2008);
 4 *Sadoski v. Mosley*, 435 F.3d 1076, 1079 (9th Cir. 2006); *Mishler v. Clift*, 191 F.3d 998, 1003 (9th
 5 Cir. 1999); *Meek v. County of Riverside*, 183 F.3d 962, 965 (9th Cir. 1999); *New Alaska Dev. Corp.*
 6 *v. Guetschow*, 869 F.2d 1298, 1301-02 (9th Cir. 1989); *Gregory v. Thompson*, 500 F.2d 59, 62 (9th
 7 Cir. 1974) (“A seemingly impregnable fortress in American Jurisprudence is the absolute immunity
 8 of judges from civil liability for acts done by them within their judicial jurisdiction.”).

9 In the instant case, plaintiff brings action against Judge Walsh for denying a motion, which
 10 is a judicial act taken within the jurisdiction of the Eighth Judicial District Court for the State of
 11 Nevada. As such, Judge Walsh is absolutely immune from plaintiff’s civil rights action. Plaintiff’s
 12 claim against Judge Walsh is based on a legal conclusion that is untenable and frivolous. *See*
 13 *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798
 14 (9th Cir. 1991). The Court must dismiss this action with prejudice, as frivolous and because
 15 plaintiff seeks monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. §
 16 1915A(b)(1),(2); 28 U.S.C. § 1915(e)(2).

17 **IV. Conclusion**

18 **IT IS THEREFORE ORDERED** that plaintiff’s application to proceed *in forma pauperis*
 19 (ECF No. 1) without having to prepay the full filing fee is **GRANTED**. The Clerk of Court
 20 **SHALL FILE** the complaint. (ECF No. 1-1). Plaintiff shall not be required to pay an initial
 21 installment fee. Nevertheless, the full filing fee shall still be due, pursuant to 28 U.S.C. § 1915, as
 22 amended by the Prisoner Litigation Reform Act of 1996. The movant herein is permitted to
 23 maintain this action to conclusion without the necessity of prepayment of fees or costs or the giving
 24 of security therefor. This order granting *in forma pauperis* status shall not extend to the issuance of
 25 subpoenas at government expense.

26 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by the
 27 Prisoner Litigation Reform Act of 1996, the Nevada Department of Corrections shall pay to the
 28 Clerk of the United States District Court, District of Nevada, 20% of the preceding month’s deposits

1 to the account of **Benjardi B. Viray, #78787** (in months that the account exceeds \$10.00) until the
2 full \$350 filing fee has been paid for this action. The Clerk shall send a copy of this order to the
3 attention of **Albert G. Peralta, Chief of Inmate Services for the Nevada Department of Prisons**,
4 P.O. Box 7011, Carson City, NV 89702.

5 **IT IS FURTHER ORDERED** that, even though this action is being dismissed, the full
6 filing fee shall still be due, pursuant to 28 U.S.C. §1915, as amended by the Prisoner Litigation
7 Reform Act of 1996.

8 **IT IS FURTHER ORDERED** that this action is **DISMISSED WITH PREJUDICE AS**
9 **FRIVOLOUS**.

10 **IT IS FURTHER ORDERED** that the Clerk of Court **SHALL ENTER JUDGMENT**
11 accordingly.

12 **IT IS FURTHER ORDERED** that this Court **CERTIFIES** that any *in forma pauperis*
13 appeal from this order would **not** be taken “in good faith” pursuant to 28 U.S.C. § 1915(a)(3).

14 Dated May 1, 2014.

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17 UNITED STATES DISTRICT JUDGE
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